

REMARKS

The Final Office Action dated November 18, 2009 has been received and reviewed. Prior to the present communication, claims 1-7, 26-29, 46, and 51-57 were pending in the subject application. Each of claims 1, 26, and 46 has been amended herein. Accordingly, claims 1-7, 26-29, 46, and 51-57 remain pending. Support for the amendments may be found in the As-Filed Specification, at least, at ¶¶ [0029] – [0032]. Care has been exercised to introduce no new subject matter. Applicants respectfully request reconsideration of the present Application in view of the above amendments and the following remarks.

Rejections based on 35 U.S.C. § 103

A. Applicable Authority

Title 35 U.S.C. § 103(a) declares that a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” In *Graham v. John Deere*, the Supreme Court counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *See Graham v. John Deere Co.*, 383 U.S. 1 (1966).

“In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” MPEP § 2141.02(I) (emphasis in original) (citing *StratoFlex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983)). “All words in a claim must be considered in judging the patentability of that

claim against the prior art.” MPEP § 2143.03 (quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (C.C.P.A. 1970)). Moreover, if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. MPEP § 2143.03 (citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

“The examiner bears the initial burden of factually supporting a *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness To reach a proper determination of obviousness, the examiner must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made. In view of all factual information, the examiner must then determine whether the claimed invention ‘as a whole’ would have been obvious at that time to that person. *Id.* (emphasis added). Knowledge of applicant’s disclosure must be put aside in reaching this determination [I]mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” MPEP § 2142.

“The key to supporting any rejection under 35 U.S.C. 103 is the **clear articulation of the reason(s)** why the claimed invention would have been obvious.” MPEP § 2142 citing *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (U.S. 2007) (emphasis added), which notes that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. Moreover, the Federal Circuit has stated that “‘rejections on obviousness **cannot be sustained with mere conclusory statements**; instead, there must be some **articulated reasoning** with some rational underpinning to support the legal conclusion of obviousness.’” MPEP § 2142 (emphasis added) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). See also *KSR*, 127 S. Ct. at 1741 (quoting Federal Circuit statement with approval).

B. Rejection of claims 1-7, 26-29, 46, and 51-57

Claims 1-7, 26-29, 46, and 51-57 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,985,870 to Martucci, et al. (hereinafter “Martucci”). Applicants submit that the cited references, either alone or in combination, fail to teach or suggest each and every element of the independent claims, as amended herein. Applicants respectfully traverse this rejection.

Independent claim 1, as amended herein, is directed to a computer-implemented method for preventing one or more immunizations from being administered to a person too early. The method includes, in part, receiving, from a clinician, a request for an immunization schedule for a person during a present clinical visit; receiving, from the clinician, an identification of an immunization to be administered to the person during the present clinical visit; generating a custom immunization schedule for the person based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations; determining whether it is too soon to administer the immunization based on the custom immunization schedule for the person; and based on a determination that it is not too soon to administer the immunization, displaying a notification that it is safe to administer the immunization during the present clinical visit.

In contrast, Martucci is directed to a medication delivery system including a medical container holding a prescribed medication to be delivered to a patient. *See e.g.*, Martucci, Abstract. The medication delivery system is intended to ensure delivery of “the right dose to the right patient with the right drug at the right time and by the right route.” *Id.* at col. 2, ll. 60-65.

With respect to independent claim 1, Martucci fails to teach or suggest (i) receiving, from a clinician, a request for an immunization schedule for a person during a present clinical visit; (ii) receiving, from the clinician, an identification of an immunization to be administered to the person during the present clinical visit; and (iii) generating a custom immunization schedule for the person based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations.

Martucci describes a clinician providing a prescribed medication along with specific instructions for delivering the medication to the patient. *See id.* at col. 4, ll. 18-52. Martucci fails to teach receiving, from a clinician, both a request for an immunization schedule for a person or an identification of an immunization to be administered to the person. Martucci fails to even mention an immunization, let alone an immunization schedule for a patient or a request from a clinician to access said immunization schedule.

Further, Martucci fails to teach generating a custom immunization schedule for the person based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations. Rather, Martucci simply describes a pump that delivers fluid medications to patients according to a clinician's order. *See generally*, Martucci. At no point does Martucci describe utilizing data including immunizations received during former clinical visits, an immunization to be administered during the present clinical visit, and a standard schedule of recommended immunizations to generate a custom immunization schedule for a person.

In view of the above, it is respectfully submitted that Martucci fails to teach or suggest each and every element of independent claim 1, as amended herein. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection of independent claim 1 is respectfully requested for at least the above-cited reasons. As claims 2-7 depend, either directly or indirectly, from independent claim 1, withdrawal of the § 103(a) rejection of these claims is requested as well. *See In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) (a dependent claim is obvious only if the independent claim from which it depends is obvious); *see also*, MPEP § 2143.03.

Independent claim 26 is directed to a computer system including one or more computer-readable storage media having computer-executable modules stored thereon for preventing one or more immunizations from being administered to a person too early. The system includes, in part, a receiving module for receiving from a clinician an identification of an immunization to be administered to a person during a present clinical visit, wherein the identification of the immunization is received from the clinician during the present clinical visit; a determining module for determining whether it is too soon to administer the immunization in response to receiving the identification of the immunization to be administered from the clinician during the present clinical visit, wherein determining whether it is too soon to administer the immunization includes accessing a custom immunization schedule for the person that was generated based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations; and a displaying module for displaying a warning that the immunization is being administered too soon or a notification that the immunization may be administered.

Independent claims 1 and 26 recite generally similar claim features. Therefore, the above arguments regarding independent claim 1 apply with equal force to independent claim 26. Applicants respectfully request withdrawal of the rejection of claim 26. Claims 27-29 depend, either directly or indirectly, from independent claim 26. As such, Applicants request withdrawal of the rejection of claims 27-29 as well.

Independent claim 46 is directed to a computer-storage medium having computer-executable instructions for performing a method for preventing one or more immunizations from being administered to a person too early. The claim recites, in part, receiving from a clinician, a request for an immunization schedule for a person during a present clinical visit; receiving from the clinician an identification of an immunization to be administered to the person, wherein the identification of the immunization is input by the clinician during the present clinical visit with the person; generating a custom immunization schedule for the person, wherein the custom immunization schedule is based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations; determining whether it is too soon to administer the immunization during the present clinical visit based on the custom immunization schedule; based on a determination that it is too soon to administer the immunization, determining whether it is safe to administer the immunization too soon; and upon determining that it is not safe to administer the immunization too soon, displaying a warning indicating that the immunization is not safe to administer to the person.

Independent claims 1 and 46 recite generally similar claim features. Therefore, the above arguments regarding independent claim 1 apply with equal force to independent claim

46. Applicants respectfully request withdrawal of the rejection of claim 46. Claims 51-57 depend, either directly or indirectly, from independent claim 46. As such, Applicants request withdrawal of the rejection of claims 51-57 as well.

Martucci also fails to teach or suggest additional features of independent claim 46. For instance, Martucci fails to teach or suggest based on a determination that it is too soon to administer the immunization, determining whether it is safe to administer the immunization too soon; and upon determining that it is not safe to administer the immunization too soon, displaying a warning indicating that the immunization is not safe to administer to the person. Rather, Martucci generally describes displaying a notification that a medication is being delivered too late or too early. *See id.* at col. 11, ll. 40-41; FIGS. 15(j) and 15(k). Martucci does not describe making a determination as to whether it is still safe to administer an immunization. In contrast, Martucci illustrates, in FIG. 15(k), a notification indicating that the medication is being administered too early but, rather than determining whether it is still safe to administer the medication, as recited in independent claim 46, the interface of FIG. 15(k) queries a user as to whether they would like to continue to deliver the medication. Thus, Martucci simply informs a user that a medication is being delivered either too early or too late and then asks a user to determine whether or not to administer the medication. Martucci does not teach determining whether it is still safe to administer the immunization, as recited in independent claim 46.

In view of the above, it is respectfully submitted that Martucci fails to teach or suggest every element of independent claim 46. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection of independent claim 46 is respectfully requested for at least the above-cited reasons.

CONCLUSION

For at least the reasons stated above, claims 1-7, 26-29, 46, and 51-57 are believed to be in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or asturgeon@shb.com (such communication via email is herein expressly granted) – to resolve the same.

Submitted herewith are an Information Disclosure Statement and a Request for Continued Examination, along with the appropriate fees. It is believed that no additional fees are due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number CRNI.107715.

Respectfully submitted,

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